TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1934

No. 18

HUEY P. LONG, PETITIONER,

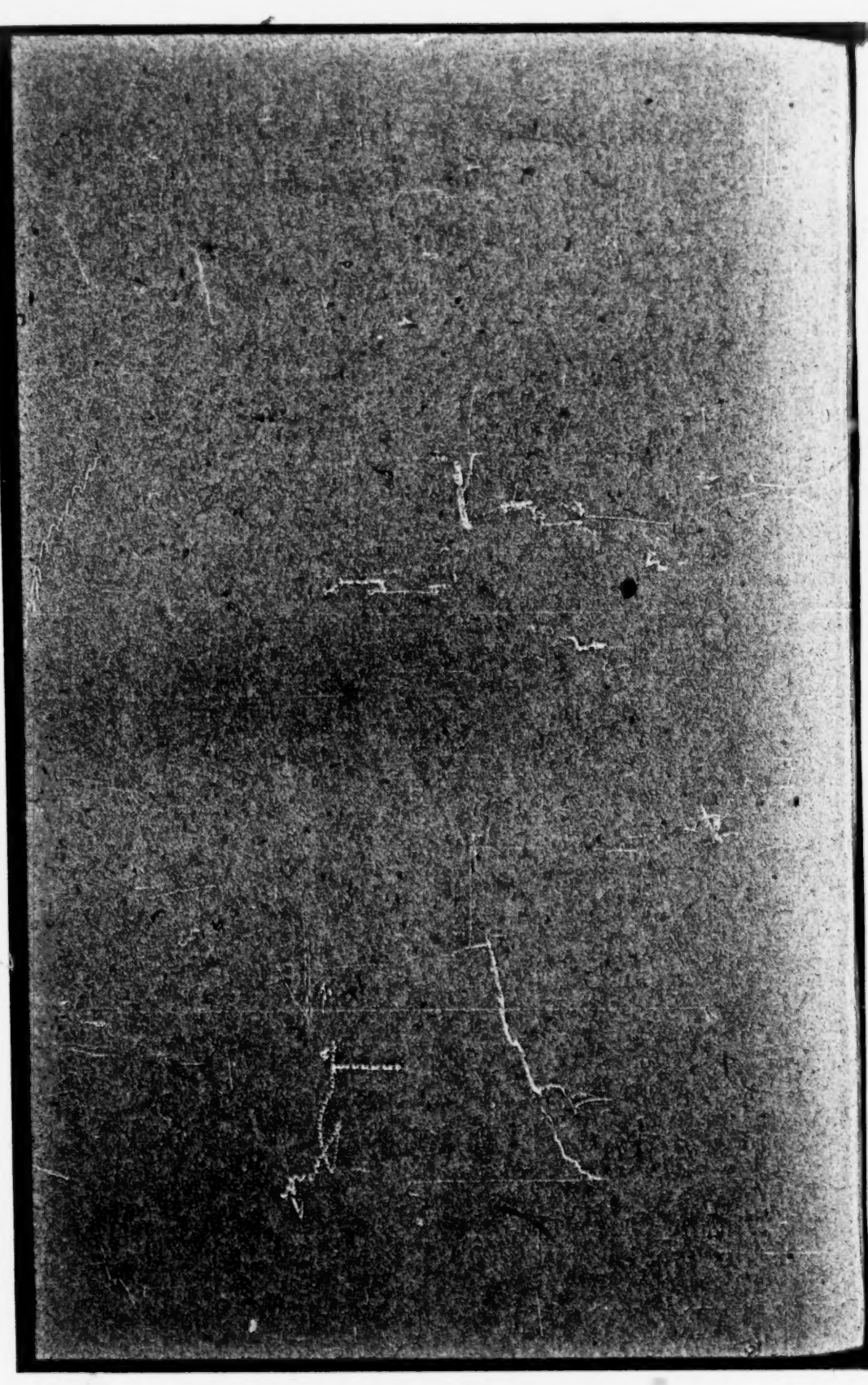
vs.

SAMUEL T. ANSELL

ON WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA

PETITION FOR CERTIORARI FILED APRIL 10, 1934

CERTIORARI GRANTED MAY 7, 1934



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[fol. 1] [Caption omitted]

IN SUPREME COURT OF THE DISTRICT OF COLUMBIA

At Law. No. 82547

SAMUEL T. ANSELL, Plaintiff,

vs.

HUEY P. LONG, Defendant

DECLARATION—Filed March 27, 1933

The plaintiff, Samuel T. Ansell, sues the defendant, Huey P. Long, for that, heretofore, on, to wit, the 7th day of [fol. 2] March, A. D. 1933, and for a long time prior thereto the plaintiff was and now is a resident of the District of Columbia, and an attorney at law engaged in the practice of his said profession in the said District and elsewhere, and on the day and year aforesaid and for some time prior thereto the defendant was and now is a United States Senator from the State of Louisiana, and

Whereas, on the day and year aforesaid the plaintiff was and always theretofore had been, and now is, a good, true, lawful and honest citizen and possessed of an unblemished reputation for integrity and character in the conduct of his life as such citizen and in his professional conduct as an attorney at law; and whereas, the plaintiff has held many public offices of the highest trust and responsibility, always acquitting himself therefrom with the greatest credit, to wit,

Upon graduation from the U. S. Military Academy in 1899 plaintiff was commissioned a second lieutenant in the United States Army and served continuously, honorably, and faithfully as a commissioned officer in said Army until, to wit, July 21, 1919, when he resigned to engage in the practice of his profession as an attorney at law, he having been promoted by reason of meritorious and conspicuous service through the various grades from second lieutenant to brigadier general in which latter grade he served in the years 1917, 1918 and 1919 as the Acting Judge Advocate

General of the Army, for which service he was awarded the Distinguished Service Medal by order of the President of the United States "for especially meritorious and conspicuous service as Acting Judge Advocate General of the Army, whose broad and constructive interpretations of law and regulations have greatly facilitated the conduct of the war and military administration"; and during his said military service plaintiff was assigned to and performed to the entire satisfaction of and with commendation from his superior officers the duties of an officer of the line of the Army in active service against the enemy and in garrison, of instructor of law at the United States Military Academy, of prosecuting attorney for the Moro Province in the Philippine Islands, of Law Officer for the Bureau of Insular Affairs, of special attorney before the Federal [fol. 3] courts for the Government of Puerto Rico and the Philippine Islands, and other important offices and

Whereas, the plaintiff now is and always has been a good, true, honest, just, faithful, and law-abiding citizen and has always behaved and conducted himself in his private and public life and in his profession as an attorney at law with honesty, integrity, and credit and in accordance with the highest ethics of his said profession and has never been in any way dishonest, corrupt, fraudulent or unethical nor has he ever been guilty of dishonest, corrupt or fraudulent, collusive, illegal, or unethical conduct in the practice of his said profession or in his private life, nor, until the time of the committing of the said grievances by the said defendant as hereinafter mentioned, had it ever been supposed, suspected, or charged that he, the plaintiff, was in any way dishonest, corrupt, criminal, fraudulent or unethical or was ever guilty of dishonest, corrupt, criminal, fraudulent, collusive, illegal or unethical conduct in the practice of his said profession or in his private life;

Whereby and by reason of the premises, the plaintiff, before the committing by the defendant of the several grievances hereinafter mentioned, had deservedly acquired and enjoyed the good opinion and credit of all of his neighbors, friends, clients and other good and worthy persons to whom he was known personally and by national reputation in respect of his honesty, integrity, credit and professional qualifications, and is now and has been for a long time past a member in good standing of the District of Columbia Bar

Association and an honorary member of other Bar Associations; and

Whereas, on or about the 14th day of January, 1933, plaintiff was appointed counsel for the Special Committee of the United States Senate on Investigation of Presidential and Senatorial Elections, which appointment plaintiff accepted with reluctance and only after repeated and insistent requests of the Chairman of the Committee and the Chairman's friends, and performed his duty throughout the period for which he was retained efficiently and with the utmost fidelity to his profession as an attorney and to his office as counsel for the Committee, and to the frequently expressed satisfaction and praise of the Chairman of the Committee, and in the course of his duties under [fol. 4] such appointment be presented through many reputable witnesses much competent, relevant and credible evidence at hearings of said Committee in the City of New Orleans in the State of Louisiana in the months of January and February, 1933, which plaintiff believed and still believes tended to prove that one John H. Overton, for whom defendant assumed to act as counsel, had been elected a United States Senator from Louisiana fraudulently and unlawfully and as the result of the operation of a political machine organized, operated, and controlled by defendant and that fraud, corruption, force and intimidation were means deliberately chosen and employed by defendant for procuring the election of said Overton, and that said election was the product of systemized lawlessness.

Yet, on the day and year aforesaid, to wit, the 7th day of March, A. D. 1933, the defendant, well knowing the premises but contriving and wickedly and maliciously intending to injure the plaintiff in his good name and reputation as a citizen and as an attorney as aforesaid and to lessen and destroy his said good reputation and to bring him, the plaintiff, into public scandal, infamy and disgrace, and to injure him, the plaintiff, in his good name, fame and credit, and to injure him, the plaintiff, in his good name and reputation in his said profession as aforesaid and to cause it to be suspected and believed by his neighbors, other worthy citizens and members of the legal profession that he, the plaintiff, had been and was dishonest, deceitful, corrupt, fraudulent, and unprofessional and to cause it to be suspected and believed by them that he, the plaintiff, was and had been

guilty of dishonest, corrupt, fraudulent, deceitful, collusive, illegal and unprofessional conduct in the practice of his said profession and in his private life, and to vex, harass, oppress, impoverish and wholly ruin the plaintiff, the said defendant at the time aforesaid in the City of Washington in the District of Columbia, falsely, wickedly and maliciously composed and published and caused and procured to be composed and published of and concerning the plaintiff as a citizen and of and concerning the conduct of the plaintiff in his said profession, a false, scandalous, malicious libel purporting to be a reprint of a portion of the Congressional Record, Seventy-Second Congress, Second Session, at the top of the first page of which appeared the statement "Not printed at government expense", which said [fol. 5] libelous publication was headed "Louisiana's Defense" immediately beneath which appeared the further heading "Speech of Hon. Huey P. Long of Louisana in the Senate of the United States Tuesday, February 21, 1933", which libelous printed matter defendant sent and caused to be sent through the mail and otherwise distributed in great numbers severally to, and was received and read by, many persons in the State of Louisiana, the District of Columbia, and in many other parts of the country, and which said libelous matter contained, among other things, false, scandalous, malicious, defamatory, and libelous matter of and concerning the plaintiff, that is to say, throughout the body of said publication purporting to be the print of a speech of defendant in the Senate as aforesaid, appeared subheads, displayed in capital type, of and concerning plaintiff, as follows:

"Rescued by a Burglar" ("Rescued" meaning the assistance rendered by plaintiff to said Committee, and "Burglar" meaning plaintiff);

"Dog Son of a Wolf" (meaning plaintiff);

"Defense for Senator Howell" (meaning to impute to plaintiff- conduct as counsel was such as to demand a defense for his employment);

"Senator Howell Expresses Regret" (meaning "regret" for the employment of plaintiff);

"Supreme Court Ruling Defied" (meaning that counsel, and committee under his advice, defied rulings of the Supreme Court and acted lawlessly);

"Unfounded Perjury" (meaning that counsel resorted to perjury and presented perjured testimony);

"Senator Howell's Mistake" ("mistake" referring to employment of plaintiff as counsel and imputing to him professional incompetence);

"Outside Questions" (meaning that counsel ignored the subject under inquiry and resorted to extraneous matters);

"No Proof of Fraud Developed" (meaning that plaintiff caused the Committee to ignore the subject under investigation for irrelevant matters);

"No Corruption Even Mentioned" (meaning that plaintiff ignored the subject under investigation and resorted to extraneous matters);

[fol. 6] "Justice for a State" (meaning that plaintiff departed from his duty as counsel and attacked the people and State of Louisiana),

and which said libelous publication contained, amongst other things, in the body thereof, of and concerning plaintiff, the following further false, scandalous, malicious and libelous matter:

"He (meaning the plaintiff) was the gentleman who practically forged his own appointment as Judge Advocate General (meaning Judge Advocate General, United States Army)."

* * * * * * *

"I want to give the Senate, before I go a little further into the conduct of this scoundrel (meaning the plaintiff), the advisor of the chairman, the select counsel of the chairman, picked by the chairman, condemned by the Government (meaning the government of the United States) as a thief and a scoundrel and a crook—"

* * * * * * *

"After he (meaning the plaintiff) had been practically run out of the Army for fraud, when Judge William H. Taft (meaning the late William Howard Taft, Chief Justice of the Supreme Court of the United States) saw a charge made against the administration of Newton D. Baker (meaning former Secretary of War Newton D. Baker) in the Democratic administration, Judge Taft, who had been Secretary of War, thinking it was his duty to do so as a good citizen, in the interest of this country (meaning the

United States), gave information to show that the scoundrel (meaning the plaintiff) was a infamous liar; * * *"

* * * * * * *

"In the midst of it (meaning a certain financial crisis in the city of New Orleans, Louisiana) was this gentleman by the name of Ansell (meaning the plaintiff), whom I can never describe except as Victor Hugo described some individuals. Hugo said, there is an animal for every human; there is not a human that you can not look at long eonugh, if you know animal life, without finding his counterpart among the animal kingdom. There is an old fable, Hugo says, that with the birth of every litter of wolves there is [fol. 7] one dog born, and the mother immediately devours the dog that is born with the litter of wolves for fear that he will be vicious enough to eat up the balance of the litter—the dog son of a wolf. Put the face on Ansell (meaning the plaintiff) and you have got the dog son of a wolf."

* * * * * * *

"And for a committee (meaning the Special Committee of the Senate hereinbefore referred to) to have allowed this man Ansell (meaning the plaintiff) to call brothers of a man who was not a party to the contest, who was not a candidate for office, to have allowed this scoundrel (meaning the plaintiff), condemned for every phase of crime that Congress could find in the career of a living human being, to have permitted him to call the brothers of a man to testify to irrelevant matters against a man not connected with the case in order that they might have the privilege under the law that what they said could be published without there being a remedy for anyone—I want to say that that was much more low down, and that the day of the cutthroat had come into its own when Ansell (meaning the plaintiff) was in charge of the matter (meaning the hearings of the Special Committee hereinbefore referred to)."

* * * * * * *

"He (meaning the plaintiff) had misrepresented facts, and, as a result, he got a commission (meaning a commission as brigadier general, United States Army) from the Chief of Staff (meaning the Chief of Staff, United States Army)."

* * * * * * *

"No, sir; I do not claim any privilege from this scoundrel (meaning the plaintiff) anywhere on earth under God's living sun."

* * * * * * *

"Anywhere on earth. That is, however, I invite him (meaning the plaintiff) to sue me in any court of competent jurisdiction, and I will not defend the suit except on the ground that he (meaning the plaintiff) is a scoundrel and a thief and a rascal and a crook and has been determined to be such by an investigating committee of Congress."

* * * * * * *

[fol. 8] "I think he (meaning the plaintiff) is one of the lowest scoundrels that has ever been allowed the immunity of law, and I have the authority of Congress to back me up in that statement."

* * * * * * *

Second Count. And the said plaintiff, Samuel T. Ansell, adopting by reference for this the second count of this declaration the averments hereinbefore made of his good character and conduct as a citizen and as an attorney at law, of the consequences thereupon of the said several grievances of the defendant mentioned, of his appointment and the performance of his duties as counsel for the Special Committee of the United States Senate investigating the election of one John H. Overton as a United States Senator from the State of Louisiana, and all other preliminary averments hereinbefore made, further saith, that the said Huey P. Long, well knowing the premises as aforesaid, and contriving and intending as aforesaid, heretofore, to wit, on the 7th day of March, 1933, in the City of Washington, District of Columbia, falsely, wickedly, maliciously made and published and caused to be made and published, of and concerning plaintiff, a false, scandalous, malicious and defamatory libel, to wit, a purported reprint of a portion of the Congressional Record, Seventy-Second Congress, second session, at the top of the first page of which appeared the statement "Not printed at government expense" which said libelous publication was headed "Louisiana's Defense, Speech of Hon. Huey P. Long in the Senate

of the United States Tuesday February 21, 1933" which said false, scandalous, malicious and defamatory printed matter defendant sent or caused to be sent in great numbers severally to, and was received and read by many persons in the State of Louisiana, the District of Columbia, and other parts of the country through the mails under his official frank inclosed within a letter dated Washington, D. C., March 7, 1933, addressed to "Dear Friend" and subscribed "Your friend, Huey P. Long, U. S. Senator" written and caused to be written and signed and caused to be signed by the defendant and with his name and in which the defendant invited the attention of the addressee to, and expressed the hope that the addressee would read, and [fol. 9] various persons in the State of Louisiana, the District of Columbia, and elsewhere did read, the said letter and the said "speech" purporting to be the print of a speech by the defendant in the Senate of the United States of and concerning the plaintiff as aforesaid, which said false, scandalous, malicious, and defamatory document contained, among other things, false, scandalous, malicious and defamatory sub-heads displayed in capital type, of and concerning plaintiff, as follows:

"Rescued by a Burglar" ("rescued" meaning the assistance rendered by plaintiff to said Committee, and "Burglar" meaning plaintiff);

"Dog Son of a Wolf" (meaning plaintiff);

"Defense for Senator Howell" (meaning to impute to plaintiff- conduct as counsel was such as to demand a defense for his employment);

"Senator Howell Expresses Regret" (meaning "regret" for the employment of plaintiff);

"Supreme Court Ruling Defied" (meaning that counsel, and committee under his advice, defied rulings of the Supreme Court and acted lawlessly);

"Unfounded Perjury" (meaning that counsel resorted to perjury and presented perjured testimony);

"Senator Howell's Mistake" ("mistake" referring to employment of plaintiff as counsel and imputing to him professional incompetence);

"Outside Questions" (meaning that counsel ignored the subject under inquiry and resorted to extraneous matters);

"No Proof of Fraud Developed" (meaning that plaintiff

caused the Committee to ignore the subject under investigation for irrelevant matters);

"No Corruption Even Mentioned" (meaning that plaintiff ignored the subject under investigation and resorted to extraneous matters);

"Justice for a State" (meaning that plaintiff departed from his duty as counsel and attacked the people and State of Louisiana),

and which said false, scandalous, malicious and defamatory document contained in the body thereof, of and concerning plaintiff, the following further false, scandalous, malicious and defamatory matter:

[fol.10] "He (meaning the plaintiff) was the gentleman who practically forged his own appointment as Judge Advocate General (meaning Judge Advocate General, United States Army)."

* * * * * * *

"I want to give the Senate, before I go a little further into the conduct of this scoundrel (meaning the plaintiff), the advisor of the chairman, the select counsel of the chairman, picked by the chairman, condemned by the Government (meaning the government of the United States) as a thief and a scoundrel and a crook—"

* * * * * * *

"After he (meaning the plaintiff) had been practically run out of the Army for fraud, when Judge William H. Taft (meaning the late William Howard Taft, Chief Justice of the Supreme Court of the United States) saw a charge made against the administration of Newton D. Baker (meaning former Secretary of War Newton D. Baker) in the Democratic administration, Judge Taft, who had been Secretary of War, thinking it was his duty to do so as a good citizen, in the interest of this country (meaning the United States), gave information to show that the scoundrel (meaning the plaintiff) was an infamous liar; * * *"

* * * * * * *

"In the midst of it (meaning a certain financial crisis in the city of New Orleans, Louisiana) was this gentleman

by the name of Ansell (meaning the plaintiff, whom I can never describe except as Victor Hugo described some individuals. Hugo said, there is an animal for every human; there is not a human that you can not look at long enough, if you know animal life, without finding his counterpart among the animal kingdom. There is an old fable, Hugo says, that with the birth of every litter of wolves there is one dog born, and the mother immediately devours the dog that is born with the litter of wolves for fear that he will be vicious enough to eat up the balance of the litter—the dog son of a wolf. Put the face on Ansell (meaning the plaintiff) and you have got the dog son of a wolf."

* * * * * * *

[fol. 11] "And for a committee (meaning the Special Committee of the Senate hereinbefore referred to) to have allowed this man Ansell (meaning the plaintiff) to call brothers of a man who was not a party to the contest, who was not a candidate for office, to have allowed this scoundrel (meaning the plaintiff), condemned for every phase of crime that Congress could find in the career of a living human being, to have permitted him to call the brothers of a man to testify to irrelevant matters against a man not connected with the case in order that they might have the privilege under the law that what they said could be published without there being a remedy for anyone—I want to say that that was much more low down, and that the day of the cutthroat had come into its own when Ansell (meaning the plaintiff) was in charge of the matter (meaning the hearings of the Special Committee hereinbefore referred to),"

* * * * * * *

"He (meaning the plaintiff) had misrepresented facts, and, as a result, he got a commission (meaning a commission as a brigadier general, United States Army) from the Chief of Staff (meaning the Chief of Staff, United States Army)."

* * * * * * *

"No, sir; I do not claim any privilege from this scoundrel (meaning the plaintiff) anywhere on earth under God's living sun."

* * * * * * *

"Anywhere on earth. That is, however, I invite him (meaning the plaintiff) to sue me in any court of competent jurisdiction, and I will not defend the suit except on the ground that he (meaning the plaintiff) is a scoundrel and a thief and a rascal and a crook and has been determined to be such by an investigating committee of Congress."

* * * * * * *

"I think he (meaning the plaintiff) is one of the lowest scoundrels that has ever been allowed the immunity of the law, and I have the authority of Congress to back me up in that statement."

* * * * * * *

[fol. 12] Third Count. And the said plaintiff, Samuel T. Ansell, adopting by reference for this the third count of this declaration the averments hereinbefore made of his good character and conduct as a citizen and as an attorney at law, of the consequences thereupon of the said several grievances of the defendant mentioned, of his appointment and the performance of his duties as counsel for the Special Committee of the United States Senate investigating the election of one John H. Overton, as a United States Senator from the State of Louisiana, and all other preliminary averments hereinbefore made, further saith, that the said Huey P. Long, well knowing the premises as aforesaid, heretofore, to wit, on the 7th day of March, 1933, in the City of Washington, District of Columbia, falsely, wickedly, and maliciously, composed and published and caused to be composed and published, of and concerning plaintiff, a false, scandalous, malicious and defamatory libel, that is to say, defendant composed and caused to be composed certain display headings of and concerning plaintiff and inserted them in and added them to and caused them to be inserted in and added to the body of the transcript of a speech of the said defendant made in the Senate of the United States on Tuesday, the 21st day of February, 1933, of and concerning plaintiff, and printed and caused to be printed at his own expense and in great numbers the said speech with said headings appearing and displayed therein throughout the body of the printed speech, and mailed and distributed and caused to be mailed and distributed to great numbers of

persons in the State of Louisiana, the District of Columbia, and elsewhere throughout the country great numbers of said printed speech containing displayed therein the false, scandalous, and libelous headings, and various of said persons in Louisiana, the District of Columbia, and elsewhere, so receiving them, read said headings in said speech, as follows:

"Rescued by a Burglar" ("Rescued" meaning the assistance rendered by plaintiff to said Committee, and "burglar" meaning plaintiff);

"Dog Son of a Wolf" (meaning plaintiff);

"Defense for Senator Howell" (meaning to impute to plaintiff conduct as counsel was such as to demand a defense for his employment);

[fol. 13] "Senator Howell Expresses Regret" (meaning "regret" for the employment of plaintiff);

"Supreme Court Ruling Defied" (meaning that counsel, and committee under his advice, defied rulings of the Supreme Court and acted lawlessly);

"Unfounded Perjury" (meaning that counsel resorted to perjury and presented perjured testimony);

"Senator Howell's Mistake" ("mistake" referring to employment of plaintiff as counsel and imputing to him professional incompetence);

"Outside Questions" (meaning that counsel ignored the subject under inquiry and resorted to extraneous matters);

"No Proof of Fraud Developed" (meaning that plaintiff caused the Committee to ignore the subject under investigation for irrelevant matters);

"No Corruption Even Mentioned" (meaning that plaintiff ignored the subject under investigation and resorted to extraneous matters);

"Justice for a State" (meaning that plaintiff departed from his duty as counsel and attacked the people and State of Louisiana).

Fourth Count. And the said plaintiff, Samuel T. Ansell, adopting by reference for this the fourth count of this declaration the averments hereinbefore made of his good reputation and conduct as a citizen and as an attorney at law and of his appointment and the performance of his duties thereunder as counsel for the Special Committee of the United States Senate investigating the election of one John H. Overton, as a United States Senator from the

State of Louisiana, and the other preliminary averments hereinbefore made, further saith that the said Huey P. Long, well knowing the premises as aforesaid, and contriving and intending as aforesaid, did heretofore, to wit, on the 17th day of February, A. D. 1933, at the city of New Orleans, in the State of Louisiana, falsely, wickedly, and maliciously compose and publish and cause to be composed and published a certain other false, scandalous, malicious and defamatory libel, to wit, a circular or placard, of and concerning the plaintiff, counsel for said Senate Committee, which said circular or placard the said defendant on and after the said 17th day of February, A. D. 1933, printed [fol. 14] and caused to be printed in great numbers and widely distributed and circulated and caused to be widely distributed and circulated in the State of Louisiana, the District of Columbia, and elsewhere throughout the country, and various persons in Louisiana, the District of Columbia, and elsewhere, received and read said circulars or placards, which said libelous circular or placard follows in this count set out in haec verba, in which wherever they appear therein, the words "Kangaroo court" mean a pretended court consisting of impostors who by force and fraud set themselves up in the guise of a court without authority of law and proceed to do their will in defiance of law, and in said circular refer to the said Senate Special Committee and to plaintiff as its counsel; the words "Kangaroo proceeding" mean the lawless proceedings of such judicial imposters and in said circular refer to the hearings conducted by said Senate Special Committee, with plaintiff as its counsel presenting the evidence, in New Orleans, Louisiana, in the investigation of the election of one John H. Overton, as a United States Senator from the State of Louisiana; the name "Ansell' means the plaintiff; the name "Howell" means the late Robert B. Howell, then and there a Senator of the United States from the State of Nebraska and chairman of said committee; the names "Pinchback" and "Kellogg" mean certain notorious political personages connected with the Reconstruction government in the State of Louisiana in the years immediately following the War between the States, which government as maintained in Louisiana and throughout the South was and is commonly known as the "carpet bag" government, which government and those

connected with it were generally, and to a great extent still are, regarded in Louisiana, throughout the South, and elsewhere, as disgraceful, contemptible, dishonest and corrupt; and the word "scallawag" means one of the class of white men of Louisiana and the South who supported said "carpet bag" government and who then and there generally were, and to some extent they and their descendants still are regarded by their fellows citizens in Louisiana, the South and to some extent elsewhere with scorn, hatred and contempt, to wit:

[fol. 15] "The Kangaroo Court

Trying to Take Louisiana Back to the Days of Kellogg, Pinchback, and the Scallawag

To the People of Louisiana:

The kangaroo court being conducted in this state by the Republican Senator Howell of Nebraska (formerly a close associate and defender of Walter Cohen), was supposed to investigate the election in September when Overton beat Broussard. But after spending ten or twelve days trying to develop something wrong with that election (which they could not do), the whole farce has now turned about 99% to letting the old skin game political gang of Louisiana take the witness stand so that they can again tell the same old lies about Huey P. Long that they have been telling for as long as the past seven or eight years.

Who has not heard the lies of Francis Williams until they would not believe him on oath? He recently lost out as chairman of the Public Service Commission, after being defeated for Mayor of New Orleans. Who did not hear the tales of Earl and Julius Long on their brother in the last campaign, and how many people believed them? Who did not read the constant stream of lies from H. B. Bozeman who had been thrown out of office and beaten twice in elections?

"Instead of Howell and Ansell trying to investigate the real question of whether Overton committed any kind of fraud to beat Broussard last September, they offer not one line of evidence about that at all. But they do call these characters that this state has been disgusted with for years, to have them repeat the same old tales and others of the kind that they have been telling the people for years.

"When these kind of tales have been told to the people and these scoundrels have lost out after telling them, that ought to have been enough to have convinced any honest man that these persons were unworthy of belief under oath. But this is the only kind of stuff there is available for Mr. Howell or his hardboiled court martial assistant, Mr. Ansell.

Howell and Ansell have already spent $25,000 of the people's money collecting up this set of tales from these scoundrels, when they could have had them for nothing. [fol. 16] All they would have had to do would have been to go to newspapers with a pair of scissors and have clipped two thousand columns of lies from these same persons and they would not have been out over 25¢ to do it. But now Brother Howell wants $25,000 more of the people's money to spend like he did the last $25,000.

It is the law of every civilized place on earth (except before Howell and Ansell) that testimony must be relevant and pertinent to the case on trial. Hearsay evidence (that is, what someone told somebody or thought) is never allowed. But Mr. Howell and Mr. Ansell have actually openly stated that they cannot carry on the proceedings with either pertinent evidence or competent evidence and that therefore so as to keep from having to close up shop, they must proceed by hearsay and irrelevant routes. They have done this so that these public liars can swear a day at a time and then when asked "Did you see that?" they answer, "No." When they are asked: "Do you know of anything wrong yourself?" they say, "No." Then when some of these scallawags are shown public documents to prove that ever their hearsay and immaterial evidence is a lie, Brother Howell frequently jumps to the relief by saying: "The witness does not know anything himself, so we rule the question out of order."

And such is the kind of a kangaroo game in Louisiana today brought here by Edwin S. Broussard, John M. Parker and the set of so-called anti-Long forces. They went to Washington to get this thing to come here to try to wash out their situation but not to try the election case. And this is not the first time this has been done. The last time was in the carpetbag days when Kellogg and Pinchback and other scallawags sent to Washington and brought back just such a kangaroo setting. They came here then for Kellogg and Pinchback and ignored law and everything

else. They were trying to break up the white primary if they could do it, and they had to go to Washington to start. The kangaroo court scenes of the Kellogg and Pinchback days are not a circumstance to what Howell and Ansell have been doing here in Louisiana for two weeks. This they do to try to accommodate John M. Parker, Edwin S. Broussard and others who say that they are so little respected in Louisiana that they cannot win an election.

[fol. 17] "But the Overton-Broussard election is hardly mentioned by the kangaroo court. They begin with 1918 and go back to 1900 and then back up to 1930, trying to find out what the 'silly' people of Louisiana meant in ever electing Huey P. Long to anything. This anti-Long set patter up Brother Howell, playing on his former political love for Walter Cohen and his admiration for Kellogg and Pinchback, (making him think he is doing the Republican party some good), and by that they have pushed him into letting go into the records not only things that have nothing to do with the case, but even hearsay testimony setting up the old pack of falsehoods that the people have heard for years and rebuked the ones making them.

I find that I cannot take up more of my time in this kangaroo proceedings. I must return to Washington, but my friends will act as attorneys for Mr. Overton wherever this kangaroo pilgrimage may alight. No one need be a bit afraid of this; they can do our good friends no harm. Our enemies are merely trying out another election and John M. Parker, who began by professing his love to Cohen, Pinchback, Kellogg and others of that type, now patters along with Howell for the same purpose.

Yours sincerely, Huey P. Long.

P. S.—When you have read this, please pass it along to some one else so as to refute lying newspapers. Employees of private concerns and the state have a right to hand out these circulars, not during their work hours. Do not fear to do so if you wish.

Huey P. Long."

which said circular or placard in the form as composed, printed, published, distributed and circulated in great numbers is annexed hereto as Exhibit "A".

And whereas the said malicious, wicked, false, and scandalous matters were wickedly, falsely and maliciously composed and published by the defendant, of and concerning plaintiff as a citizen, as an attorney at law, and as counsel for said Senate Special Committee who was and always has been an upright, law-abiding, and truthful citizen and has at all times scrupulously observed and maintained the highest standards in the practice of his pro-
[fol. 18] fession as an attorney at law, who faithfully and efficiently performed his duties as counsel for said Committee and whereas the said libelous matter so maliciously, wickedly, and falsely composed and published and so caused to be composed and published by the said defendant have greatly and permanently injured plaintiff in his said good name and fame as a citizen and as an attorney at law, and whereas the said defendant, well knowing the premises, maliciously, wickedly, with ulterior motives, and contriving and intending so to do, by means of the false, wicked and slanderous libels as aforesaid, has injured the plaintiff in his good name and fame as a citizen and as an attorney at law, and, as the defendant has been actuated by malice toward plaintiff in the committing of the grievances aforesaid, plaintiff is entitled to punitive as well as compensatory damages; and the said plaintiff has been damaged thereby in the sum of $250,000 compensatory damages and claims $250,000 as punitive damages, or a total of $500,000.

Wherefore plaintiff brings this suit and claims of the defendant the sum of $500,000, besides his costs.

Burr Tracy Ansell, George M. Wilmeth, Attorneys for Plaintiff.

Summons

Issued March 27, 1933. Frank E. Cunningham, Clerk

In Supreme Court of the District of Columbia

[Title omitted]

Summons

The President of the United States to the Defendant, Huey P. Long, Greeting:

You are hereby Summoned to appear in this Court on or before the twentieth day, exclusive of Sundays and legal
[fol. 19] holidays, after the day of service of this Writ

upon you, to answer the Plaintiff's Suit, and show why he should not have judgment against you for the cause of action stated in his declaration; and in case of your failure so to appear and answer, judgment will be given against you by default.

Witness, the Honorable Alfred A. Wheat, Chief Justice of said Court, the 27th day of March, A. D. 1933.

Frank E. Cunningham, Clerk, by Alf. G. Buhrman, Assistant Clerk. (Seal.) B. T. Ansell, G. M. Wilmeth, Attorney-.

Marshal's Return

Served copies of the declaration, affidavit, and this summons, on the Defendant, Huey P. Long, within named Personally 4-3-33.

Edgar C. Snyder, U. S. Marshal in and for the District of Columbia, by Harry C. Allen, Deputy U. S. Marshal. K.

In Supreme Court of District of Columbia

Motion to Quash Summons and Service—Filed April 25, 1933

* * * * * * *

Comes now the defendant herein, Huey P. Long, by Joseph E. Davies, Raymond N. Beebe, and Adrien F. Busick, his attorneys, and appearing specially for the purpose of this motion and for no other purpose whatever moves the court to quash the summons issued in this case and the service thereof on the following ground:

(1) The summons was issued on Monday, March 27, 1933, and served on the defendant on Monday, April 3, 1933, whereas the first session of the Seventy-Third Con- [fol. 20] gress was convened on the ninth day of March, 1933, and has remained continuously in session since that date and was in session on the dates of the issuance and service of the said summons (of which fact defendant prays the court to take judicial notice) and the defendant as alleged is a United States Senator who was in ettendance upon the meetings of the first session of the Seventy-

Third Congress of the United States and the summons and service thereof is invalid and of no legal effect whatsoever because in violation of Article 1, Section 6, Clause 1, of the Constitution of the United States, which provides that Senators and Representatives of the United States "shall in all cases except treason, felony and breach of the peace be privileged from arrest during their attendance at the session of their respective houses, and in going to and returning from the same."

Joseph E. Davies, Raymond N. Beebe, Adrien F. Busick, Attorneys for Defendant, Appearing Specially for the Purpose of This Motion and for no Other Purpose.

Service of a copy of the above motion is acknowledged this 25th day of April, 1933.

B. Tracy Ansell, by Anne P. Baron, Attorneys for Plaintiff.

In Supreme Court of the District of Columbia

Order Denying Motion to Quash—May 9, 1933

* * * * * * *

Upon consideration of the motion filed herein, to quash summons and service, it is ordered that said motion be, and the same is hereby denied.

Further, for good cause shown it is this day ordered that further proceedings in this cause be stayed for a period of twenty days hereof pending application to the Court of Appeals of this district for a special appeal.

[fol. 21] In Court of Appeals of the District of Columbia, April Term, 1933

No. 2127, Original. 82547, Law

Huey P. Long, Petitioner,

vs.

Samuel T. Ansell

Order Allowing Special Appeal—Filed June 14, 1933

On consideration of the petition for the allowance of a special appeal from the order of the Supreme Court of the

District of Columbia entered in the above entitled cause on the 9th day of May, 1933,

It is by the Court this day ordered that a special appeal be and it is hereby allowed as prayed.

Per Mr. Chief Justice Martin.

June 10, 1933.

A true copy. Test:

Henry W. Hodges, Clerk Court of Appeals, D. C.
(Seal.)

IN SUPREME COURT OF DISTRICT OF COLUMBIA

ASSIGNMENT OF ERRORS—Filed June 17, 1933

* * * * * * *

The Court erred:

(1) In denying the motion of the defendant to quash the service of process and summons; by its order entered May 9, 1933.

(2) In refusing to grant the defendant's motion to quash service of process and summons.

Joseph E. Davies, Raymond N. Beebe, Adrien F. Busick, Attorneys for Defendant.

[fols. 22 & 23] Service of a copy of the foregoing assignment of errors acknowledged this 16th day of June, 1933.

Burr Tracy Ansell, by Anne P. Baron, Sec'y.

IN SUPREME COURT OF DISTRICT OF COLUMBIA

DESIGNATION OF RECORD—Filed June 17, 1933

* * * * * * *

The clerk will please include the following in the record of this cause on special appeal:

(1) The declaration filed March 27, 1933.
(2) Summons and return of service thereon.
(3) Motion to quash summons and service, filed April 25, 1933.

Memo.: Motion to quash summons and service denied. Further proceedings stayed twenty days pending application for special appeal, May 9, 1933.

(4) Order of Court of Appeals dated June 10, 1933 allowing special appeal, filed June 14, 1933.

(5) Assignment of error filed June 17th, 1933.

(6) This designation of record filed June 17th, 1933.

Joseph E. Davies, Raymond N. Beebe, Adrien F. Busick, Attorneys for Defendant.

Service of copy of the foregoing designation of record acknowledged this 16th day of June, 1933.

Burr Tracy Ansell, by Anne P. Baron, Attorneys for Plaintiff.

Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 24] Tuesday, October 3rd, A. D. 1933.

* * * * * * *

No. 6008

HUEY P. LONG, Appellant,

vs.

SAMUEL T. ANSELL

The above entitled cause was argued by Mr. Seth W. Richardson, attorney for appellant, and was submitted to the consideration of the Court on the record and appellee's brief by Mr. Burr Tracy Ansell, attorney for the appellee.

[fol. 25] IN THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA

No. 6008

HUEY P. LONG, Appellant,

vs.

SAMUEL T. ANSELL

Appeal from the Supreme Court of the District of Columbia

Joseph E. Davies, Adrien F. Busick, and S. W. Richardson, of Washington, D. C., attorneys for appellant.

Burr Tracy Ansell, of Washington, D. C., attorney for appellee.

(Argued October 3, 1933. Decided February 5, 1934)

Before Martin, Chief Justice; Robb, Van Orsdel, Hitz, and Groner, Associate Justices

VAN ORSDEL, Associate Justice:

This case comes here by special appeal from an order of the court below denying defendant's motion to quash the summons and service issued upon a petition filed by respondent, plaintiff below, charging the defendant with publishing a false and malicious libel.

The publication, it is alleged, purported to be a report of a speech made by the defendant on the floor of the Senate of the United States. It is alleged that the speech itself contained libelous and defamatory statements; and that the defendant caused copies of the Congressional Record containing the speech to be printed and mailed to persons in Louisiana, the District of Columbia, and elsewhere. Accompanying the speech was a letter inviting the recipient to read the printed document.

It is unnecessary for us to consider the contents of the published circular that it is alleged was circulated by the defendant. It is sufficient to say that if the allegations of the petition are supported by sufficient evidence, the matter charged constitutes libel per se. The issue here presented is whether or not a Senator of the United States, while serving in his official capacity, is exempt from service of civil process in the District of Columbia.

Section 6, Article 1 of the Constitution provides as follows: "The Senators and Representatives shall receive a compensation for their services, to be ascertained by law, and paid out of the Treasury of the United States. They shall in all cases, except treason, felony, and breach of the [fol. 26] peace, be privileged from arrest during their attendance at the session of their respective Houses, and in going to and returning from the same; and for any speech or debate in either House, they shall not be questioned in any other place." Similar language is found in the constitutions of the several States, and some confusion has arisen among the courts in construing and interpreting these provisions. In some instances it is held that the word "arrest" refers to arrest in certain classes of criminal cases. In other instances it is held that the word "arrest" should be confined to physical arrest in civil cases; and in still other cases it has been held that the word "arrest" has general significance and applies even to the service of civil process.

In the case of Merrick & Durant vs. Giddings, 1 McArthur & Mackey's Reports 55, decided in 1879 by the Supreme Court of the District of Columbia, Mr. Justice Wylie, in an able opinion, reviewed at great length the decisions of the early English courts on the subject of the exemption of members of Parliament from arrest, either in criminal proceedings or by service of civil process. Originally the exemption was extended in some cases even to the prevention of the

service of summons upon servants and employees of a member of Parliament, on the theory that it might interfere with the service to be rendered by the employee to the member. The extent, however, to which these cases generally held is stated by Lord Chief Justice Denman in Stockdale vs. Hansard, 7 C. & P. 737, in which the chief justice said: "The proceedings of Parliament would be liable to continual interruption, at the pleasure of individuals, if everyone who claimed to be a creditor could restrain the liberty of the members. In early times their very horses and servants might require protection from seizure, under legal process, as necessary to secure their own attendance; but when the privilege was strained to the intolerable length of preventing the service of legal process, or the process of a cause once commenced against any member, or of threatening any who should commit the smallest trespass upon a member's land, though in the assertion of a clear right, as breaches of the privilege of Parliament—these monstrous abuses might have called for the interference of the law, and compelled the courts of justice to take a part."

These early decisions of the English courts, however, were greatly modified or set aside by an act of Parliament, 10th George 111, chapter 50, which declared: "Sec. 1. Any person may at any time, commence and prosecute any action or suit in any court of record, or court of equity, or by admirality, and in all causes matrimonial and testamentary, against any peer or lord of Parliament of Great Britain, or against any of the knights, citizens, or burgesses, etc., for the time being, or against any of their menial or any other servants, or any other persons entitled to the privilege of Parliament; no such action, suit, or other process or proceeding thereupon, shall at any time be impeached, stayed, or delayed by or under any color, or pretense of any privilege of Parliament.

"Sec. 2. But nothing in this act shall extend to subject the person of any of the knights, citizens, and burgesses, members of the House of Commons for the time being, to be arrested or imprisoned upon any such suit or proceeding." [fol. 27] This act was passed seventeen years before the drafting of our Constitution, and as said in the Merrick case, "Our Constitution was signed in 1787, and was framed by men who could not have been ignorant of that act of Parlia-

ment. It is impossible to believe that they intended that the Members of the Congress of the United States should have a greater extent of privilege in this matter, than belonged at that time to the peers of Great Britain. It is well known that the current of public sentiment in this country was altogether in the opposite direction at that period of our history. From that day to the present, neither the Senate nor the House of Representatives has ever asserted such a claim in behalf of its Members."

Mr. Justice Wylie, in his opinion in the Merrick case, holding that the constitutional exemption did not extend to the mere service of civil process, reviewed many of the early State cases in this country, in some of which it was held that the constitutional exemption from arrest extended to the service of civil process. This court, however, in the later case of Howard vs. Trust Company, 12 App. D. C. 222, rested its decision upon the soundness of the opinion in the Merrick case as announcing the law of this jurisdiction.

These decisions are in accord with the holding in the case of Williamson vs. The United States, 207 U. S. 425. In that case the court was considering the application of the exemption to a criminal case. Williamson, a Member of Congress, had been convicted and sentenced in a criminal action for violation of the public land laws. The court, in a most elaborate opinion by Mr. Justice White, reviewed at great length the law on this subject as existing both in England and this country, and reached the conclusion that the language of the constitutional exemption "breach of the peace" referred broadly to all indictable criminal actions, and that the constitutional exemption would not apply to a Member of Congress arrested for an indictable offense. Its application was limited by the court to arrests in aid of civil process.

The constitutional exemption has never been interpreted as a retreat for Congressmen and Senators from arrest for crime. At the time of the adoption of the Constitution there were laws in the States authorizing imprisonment for debt in aid of civil process. Undoubtedly it was to meet this condition that the exemptions in Federal and State Constitutions were aimed. The reason for incorporating this provision in the Constitution has largely disappeared. We no longer have imprisonment for debt, except in a few jurisdictions where an absconding debtor may be arrested and im-

prisoned. The decisions of the courts, therefore, in limiting the exemption merely to arrests in aid of civil process, and in conformity with the practice of legislation on this subject, have greatly limited the scope of the exemption. That which at the time of the adoption of the Constitution was of substantial benefit to a Member of Congress has been reduced almost to a nullity.

This brings us to the consideration of the distinction between "arrest" and the mere service of civil process. It has generally been held that an arrest is synonymous with the actual detention of the person or party arrested and does not mean merely the service of a summons or citation. Huntington vs. Shultz, 16 S. C. L. 452, 18 Am. Dec. 660; and as said in Hart vs. Flynn, 8 Dana (Ky.), 190, 191. "Arrest signifies [fol. 28] a restraint of the person, a restriction of the right of locomotion, which cannot be implied in the mere notification or summons of petition or any other service of such process by which any bail is required, nor restraint of personal liberty."

Thus it appears that the word "arrest" has a well-defined meaning. There must be some detention of the person to constitute arrest. This of course would mean any arrest made or detention in a criminal proceeding, or an arrest in a civil case in execution of the command of some court or officer of justice. Legrand vs. Bedinger, 4 T. B. Monroe (Ky.) 539-540; or as said in Baltimore, R. Co. vs. Strube, 111 Md. 119, 127; "An arrest is the seizure of a person and detaining him in the custody of the law." From these authorities it may be concluded, we think, that the term arrest may be applied to any case where a person is taken into custody or restrained of his full liberty, or where the detention of a person in custody is continued for even a short preiod of time. People vs. Erlanger, 132 Fed. 883.

This distinction between "arrest" as used in the Constitution and the mere service of civil process is sustained by many leading State cases. In Worth vs. Norton, 56 South Carolina 56, involving the application of the exemption to service of civil process, the court said: "It cannot for a moment be supposed that the framers of the Constitution were ignorant of the wide difference between arresting the person of a debtor and simply serving him with a summons to answer to a civil action which is broadly nothing more than a mere notice. It would, therefore, be wholly unwar-

ranted for a court to put such a construction upon the language found in the constitution as would make the exception conferred apply to two such very different things." To the same effect are Rhodes vs. Walsh, 55 Minn. 542; Gentry vs. Griffith, 27 Tex. 461.

Nor is there any merit in the contention that defendant is exempt from service of summons because his presence in the District of Columbia is made necessary in the performance of his official duties. The exemption of suitors and witnesses from service of summons, brought here from a foreign jurisdiction in response to legal process, has no application in the present case. The law which protects suitors and witnesses from the service of legal process grew out of the necessity of the courts themselves to protect the administration of justice from the interference which would necessarily follow if they should be subject to arrest and service of legal process. This privilege has never been extended to Members of Congress while here in the performance of their official duties, and it cannot reasonably be implied from the rule as to suitors and witnesses.

Thus it appears that there is nothing in the present case which could be distorted into a legal arrest or could be brought within the immunity afforded in the Constitution to Members of Congress. It would be an extraordinary situation if Members of Congress, while in Washington, in their official capacity, could incur common indebtedness, such as store bills, hotel bills, etc., and be entirely immune from service of civil process for the enforcement of such claims. This we have held in a number of cases is not the law and we can perceive no distinction between the service of civil process in a case of that kind and the one which is under consideration in this case.

[fol. 29] A Senator of the United States is here charged with publishing in the District of Columbia and circulating here and throughout the country, libelous and defamatory articles, alleged to be a reprint of a speech made on the floor of the Senate. The charge here is not for slander resulting from a speech made on the floor of the Senate, but for libel in publishing and distributing a copy of that speech, together with a letter calling special attention to the article.

Defendant pitches his defense upon the exemption from arrest, and not upon his exemption from responsibility for statements made in his speech on the floor of the Senate. But were that claim advanced, it would be without force, since the acts charged have only remote connection with the speech. While the published articles were in part reproductions of the speech, the offense consists not in what was said in the Senate, but in the publication and circularizing of the libelous documents.

The order denying the motion to quash is affirmed with costs.

A true copy. Teste:

—— ——, Clerk Court of Appeals, D. C.

[fol. 30] Monday, February 5th, A. D. 1934.

* * * * * * *

January Term, 1934

No. 6008

Huey P. Long, Appellant,

vs.

Samuel T. Ansell

Appeal from the Supreme Court of the District of Columbia

This cause came on to be heard on the transcript of the record from the Supreme Court of the District of Columbia and was argued by counsel.

On consideration whereof, It is now here ordered and adjudged by this Court that the order of the said Supreme Court in this cause be and the same is hereby affirmed with costs.

Per Mr. Justice Van Orsdel.
February 5, 1934.

[fol. 31] COURT OF APPEALS, DISTRICT OF COLUMBIA, APRIL TERM, 1933

No. 6008

Special Calendar

HUEY P. LONG, Appellant,

vs.

SAMUEL T. ANSELL

Appeal from the Supreme Court of the District of Columbia

MOTION FOR MODIFICATION OF OPINION

Copy to Gen. Ansell, Feb'y 13, 1934.
Davies, Beebe, Busick & Richardson, Attorneys for Appellant, Washington, D. C.

[fol. 32] Now comes the above named appellant and requests the court for a modification of its written opinion heretofore filed in the above entitled matter, upon the ground and for the reason that there has been inadvertently included within the language of such opinion reference to matters and things vitally and essentially involved in the merits of the above entitled action which said matters and things were not before the above honorable court for decision, and were not included or involved in any of the matters or things submitted to the above entitled court for its attention, consideration, determination or decision, and that the inclusion of such matters in the said written opin-
[fol. 33] ion will materially interfere with and embarrass the above named appellant hereafter upon future proceedings in the above entitled action both in the Supreme Court of the District of Columbia and in the above entitled court.

That the matters thus inadvertently included in the said opinion and hereinbefore referred to are as follows:

That in lines 14, 15 and 16 on page 1 of said opinion the court states—

"It is sufficient to say that if the allegations of the petition are supported by sufficient evidence, the matter charged constitutes libel per se."

In lines 8 to 15 inclusive, on page 5 of said opinion:

"Defendant pitches his defense upon the exemption from arrest, and not upon his exemption from responsibility for statements made in his speech on the floor of the Senate, but were that claim advanced it would be without force since the acts charged have only remote connection with the speech. While the published articles were in part reproductions of the speech, the offense consists not in what was said in the Senate, but in the publication and circularizing of the libelous documents."

That the matter thus referred to above with respect to what constitutes "libel per se" was not embraced within the motion to quash in the court below, is involved in the merits of the above entitled action and was not to any extent whatever before the above entitled court in the above entitled proceeding.

That the matters also identified above as to character of appellant's proposed defense on the merits and the substance of his claim of exemption in further proceedings in the above entitled action, and the matter with respect to [fol. 34] the constituents of an alleged offense were likewise outside and irrelevant to the Motion to Quash and the matters properly before this court under said special appeal.

Wherefore appellant prays that the opinion in the above entitled proceeding may be modified and the identified portions thereof set forth above may be stricken from said opinion, in toto, and that the said opinion make no reference directly or indirectly to any of the matters involved in such identified portions of said opinion.

Huey P. Long, Seth W. Richardson, Davies, Beebe, Busick & Richardson, Attorneys for Appellant.

February 12, 1934.

[fol. 35] [Endorsed:] 6008. Huey P. Long, Appellant, vs. Samuel T. Ansell. Motion for Modification of Opinion. Court of Appeals, District of Columbia. Filed Feb. 13, 1934. Henry W. Hodges, Clerk.

[fol. 36] Monday, February 19th, A. D. 1934.

* * * * * * *

No. 6008

HUEY P. LONG, Appellant,

vs.

SAMUEL T. ANSELL

On consideration of the motion for modification of the opinion in the above entitled cause, it is ordered by the Court that the motion be and it hereby is denied.

[fol. 37] COURT OF APPEALS OF THE DISTRICT OF COLUMBIA

No. 6008

HUEY P. LONG, Appellant,

vs.

SAMUEL T. ANSELL

Designation of Record

The Clerk, in the preparation of the transcript of record on petition to the Supreme Court of the United States for allowance of a writ of certiorari in the above entitled case, will include therein the following:

1. Record.
2. Argument.
3. Opinion.
4. Judgment.
5. Motion for Modification of Opinion.
6. Order denying Motion for Modification of Opinion.
7. This Designation.
8. Clerk's Certificate.

Seth W. Richardson, Attorney for Appellant.

[Endorsed:] 6008. Huey P. Long, Appellant, vs. Samuel T. Ansell. Designation of Record. Court of Appeals. District of Columbia. Filed April 4, 1934. Henry W. Hodges, Clerk.

[fol. 38] COURT OF APPEALS OF THE DISTRICT OF COLUMBIA

I, Henry W. Hodges, Clerk of the Court of Appeals of the District of Columbia, do hereby certify that the foregoing printed and typewritten pages numbered 1 to 37, inclusive, constitute a true copy of the transcript of record and proceedings of said Court of Appeals as designated by counsel in the case of Huey P. Long, Appellant, vs. Samuel T. Ansell, No. 6008, April Term, 1934, as the same remain upon the files and records of said Court of Appeals.

In testimony whereof, I hereunto subscribe my name and affix the seal of said Court of Appeals, at the City of Washington, this 5th day of April, A. D. 1934.

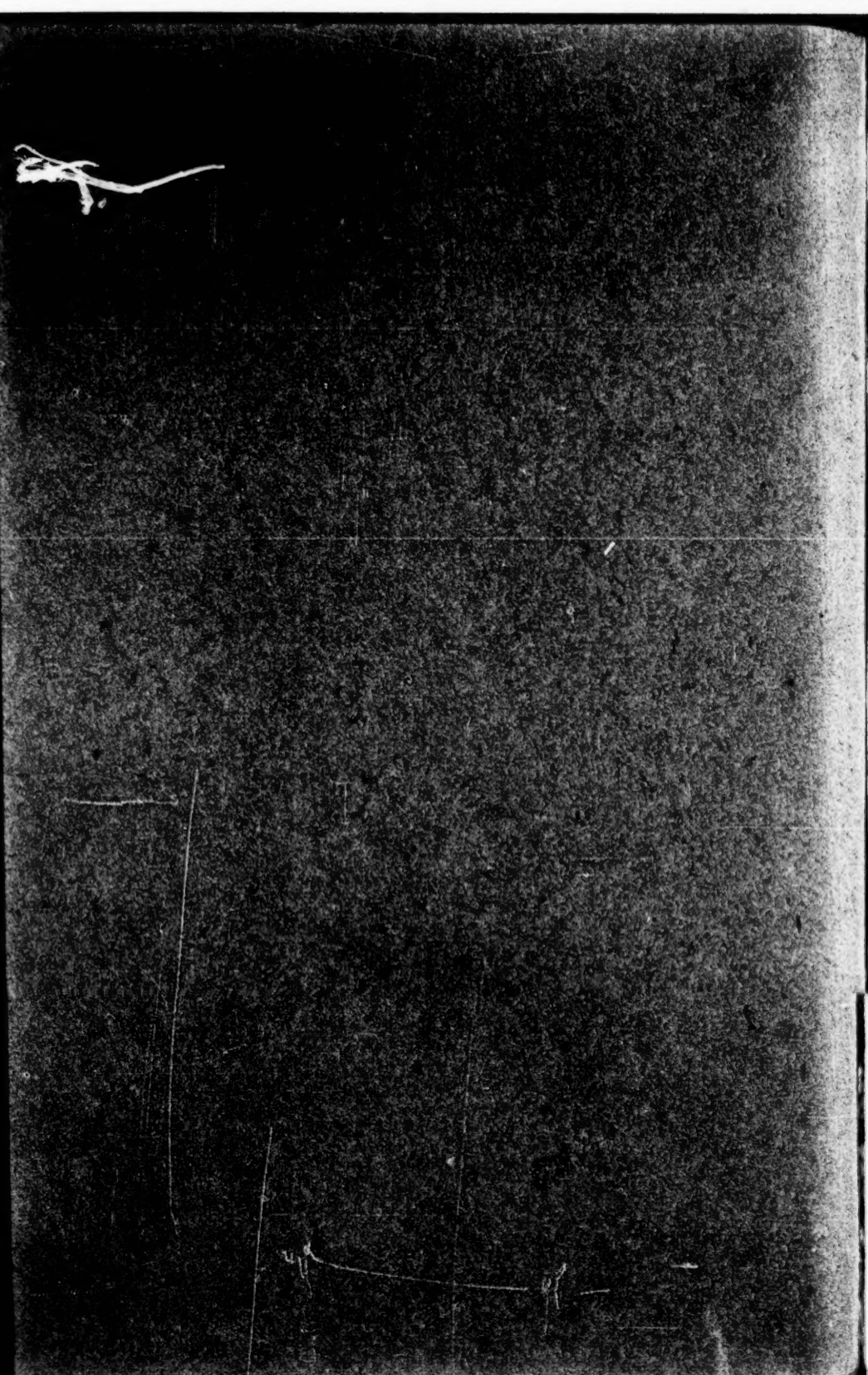
Henry W. Hodges, Clerk of the Court of Appeals of the District of Columbia. (Seal Court of Appeals, District of Columbia.)

[fol. 89] SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed May 7, 1934

The petition herein for a writ of certiorari to the Court of Appeals of the District of Columbia is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Endorsed on cover: File No. 38,557. District of Columbia Court of Appeals. Term No. 18. Huey P. Long, Petitioner, vs. Samuel T. Ansell. Petition for a writ of certiorari and exhibit thereto. Filed April 10, 1934. File No. 18, O. T., 1934.



FILE COPY

FILED
APR 10 1934
CHARLES ELMORE CROPLEY
CLERK

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1933.

No. [redacted] 18

HUEY P. LONG,

Petitioner,

vs.

SAMUEL T. ANSELL.

PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA AND BRIEF IN SUPPORT THEREOF.

JOSEPH E. DAVIES,
RAYMOND N. BEEBE,
ADRIEN F. BUSICK,
SETH W. RICHARDSON,
Attorneys for Petitioner.

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1933

No. 954

HUEY P. LONG,

Petitioner,

vs.

SAMUEL T. ANSELL.

PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

Said petitioner prays that a Writ of Certiorari issue to review the judgment of the Court of Appeals of the District of Columbia, entered in the above entitled cause on February 5, 1934, affirming the decision of the Supreme Court of the District of Columbia, dated May 9, 1933 (R. 30).

Question Presented.

Whether a member of the Senate of the United States, who resides elsewhere than in the District of Columbia, may lawfully be, during the period when such Senate is in session subjected to service of summons in a civil action in the courts of said District.

Laws Involved.

Article 1, Section 6, Clause 1, of the Constitution of the United States.

General rules of law granting exemption from service of civil process to persons temporarily within the jurisdiction on matters of public duty or public business.

Statement and Summary.

The defendant is a Senator of the United States from the State of Louisiana, and a resident of that State. This action was brought by the plaintiff, alleging that the defendant had published a libel, contained in a speech made by defendant on the floor of the Senate on February 21, 1933. That the defendant had mailed copies of that part of the Congressional Record containing the speech to persons in Louisiana, District of Columbia and elsewhere. The fourth count of the declaration is based upon the distribution of a circular by the defendant in Louisiana, containing statements respecting the methods employed by the Senate Committee in its investigation of the election of John H. Overton to the United States Senate. The action alleges damages in the amount of Five Hundred Thousand Dollars ($500,000) (R. 1-18).

The declaration and summons was served upon the defendant on April 3, 1933, in the District of Columbia, where the defendant was then temporarily in attendance upon an extraordinary session of the Senate of the United States. This Court, will, of course, take judicial notice of the fact that the Senate of the United States was at that time in such session.

Defendant, thereafter, appeared specially and moved the court to quash the summons and service upon the ground that said defendant was exempt from such service of summons under the facts and circumstances set forth

above (R. 19). The trial court denied the motion to quash, and the Court of Appeals of the District of Columbia granted a special appeal, and the matters involved in such motion were duly submitted to that court.

The District Court of Appeals affirmed the order of the trial court, denying such motion to quash (R. 30), but, in addition thereto, departed from the accepted and usual course of judicial proceedings, by going outside of, and beyond the matter in issue, to assert various conclusions of law and fact having sole effect upon, and reference to, the merits of the litigation, and vitally prejudicing the ultimate rights of this defendant in such litigation. A timely motion for modification of opinion was filed (R. 31) which motion the Court of Appeals denied (R. 33).

Specification of Errors to be Urged.

The District Court of Appeals erred:

1. In affirming the decision of the trial court denying defendant's motion to quash.

2. In exceeding its jurisdiction under the record submitted, by passing upon the merits of the litigation and defendant's rights therein.

3. In denying defendant's motion to modify such opinion.

Reasons for Granting the Writ.

1. That the Court of Appeals of the District of Columbia has decided a question of general importance, relating to the construction and application of the Constitution of the United States, and to the laws and decisions of the United States, which has not been, but should be, settled by this Court.

2. That the Court of Appeals of the District of Columbia, has decided an important question of general law, probably untenable, and in conflict with the weight of authority.

3. That the Court of Appeals of the District of Columbia has so far departed from the accepted and usual course of judicial proceedings to defendant's prejudice, as to call for an exercise of this Court's power of supervision.

(a) The question of the exemption of a member of Congress, is, we submit, a question of general importance arising under the constitution and laws of the land, which this Court should finally settle. The following decisions—which are not referred to in the decision of the Court of Appeals—are, we think, in conflict with such opinion.

Miner v. *Markham*, 28 Fed. 387 (Wisc.).
Bolton v. *Martin*, 1 Dall. 296 (Pa.).
Geyer's Lessee v. *Irwin*, 4 Dall. 107 (Pa.).
Gray v. *Sill*, 13 W. N. C. 59 (Pa.).
Ross v. *Brown*, 7 Pa. Co. Ct. 142 (Pa.).
Nones v. *Edsall*, 1 Wall. Jr.189, Fed. Cas. 10290.
Doty v. *Strong*, 1 Pinney 84 (Wisc.).
Anderson v. *Roundtree*, 1 Pinney 115 (Wisc.).
Robbins v. *Lincoln*, 27 Fed. 342.
Welsh v. *Mooney*, 33 Ohio Cir. Ct. 214.
Filer v. *McCormick*, 260 Fed. 309 (Cal.)

A conflict therefore arises which should be finally settled.

(b) The department by the Court of Appeals from the accepted and usual course of judicial proceeding here complained of by petitioner, consists of the act of that court in its opinion (R. 24), in assuming to pass upon and decide the merits of the litigation, under a record which submitted only the question of exemption from service of process, with no reference to the merits. Reference is had to the pertinent excerpts of the opinion as identified in the motion to modify (R. 31).

Petitioner is aware that the review below was upon a motion to quash, made under special appearance. No final

judgment, on the merits, therefore has yet been had. The power of this Court, however, under Section 240 (a) of the Judicial Code, to review on certiorari, is not confined to final judgments.

American Co. v. *R. R. Co.*, 148 U. S. 372.
Spiller v. *R. R.*, 253 U. S. 117.
U. S. v. *Three Friends*, 116 U. S. 1.
Fuller Co. v. *Otis Co.*, 245 U. S. 489.

The fact therefore that the question involved is one of great importance, hitherto undecided by this Court, and that the Court of Appeals granted a special appeal in order to pass upon it, and that the motion to quash, if sound, will terminate the case, and greatly conserve time, trouble, and expense consequent upon trial, persuades petitioner that the Court ought to issue the pertinent writ, and settle this disputed question, without awaiting a final judgment on the merits.

Moreover, unless the opinion below is modified and corrected, any trial hereafter to be had, will be seriously affected, impeded and prejudiced by the improper statements included in the opinion of the court below.

These propositions will have detailed consideration in a following supporting brief:

Wherefore, it is respectfully submitted that this petition for a writ of certiorari should be granted, in manner and form as may be just, necessary and proper.

JOSEPH E. DAVIES,
RAYMOND N. BEEBE,
ADRIEN F. BUSICK,
SETH W. RICHARDSON,
Attorneys for Petitioner,
Washington, D. C.

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI.

Opinion Below.

The opinions of the courts below are not reported. The opinion of the District Court of Appeals appears at page 24 of the record.

Jurisdiction.

The judgment of the District Court of Appeals was entered February 5, 1934. The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

Question Presented.

Whether a member of the Senate of the United States, who resides elsewhere than in the District of Columbia, may lawfully be, during the period when such Senate is in session, subjected to service of summons in a civil action in the courts of said District.

Laws Involved.

Article 1, Section 6, Clause 1, of the Constitution of the United States.

General rules of law granting exemption from service of civil process to persons temporarily within the jurisdiction, on matters of public duty or public business.

Summary of Law.

At common law in England until changed by statute, members of Parliament were exempt from service of civil process. Following the adoption of our Constitution, the courts quite generally held that legislators were so exempt, construing the word "arrest" in the constitutional pro-

vision, broadly, to include service of civil process, while Congress was in session.

Under general rules of law, where a person comes into a jurisdiction as a suitor or a witness, either voluntarily or involuntarily, he is exempt from service of process. This rule has now been extended to persons engaged in public or governmental business. Members of Congress should thus be within this exemption, during sessions of the Congress.

The court below, in its opinion, went outside the record and determined the merits of the litigation itself, to the great prejudice of petitioner in any future proceedings in the case.

Specification of Errors to be Urged.

The District Court of Appeals erred:

1. In affirming the decision of the trial court denying defendant's motion to quash.

2. In exceeding its jurisdiction under the record submitted, by passing upon the merits of the litigation and defendant's rights therein.

3. In denying defendant's motion to modify such opinion.

ARGUMENT.

I.

It is the contention of the Appellant that a Senator of the United States, present in the District of Columbia in attendance upon an existing session of Congress, is exempt from service of process while so present in said District.

In considering this question, we desire to present the matter in the following aspects:

(1) At common Law;

(2) Under the provisions of Article 1, Section 6, Clause 1 of the Federal Constitution;

(3) Under the general rules of law in force in the United States concerning such exemptions.

II.

At Common Law.

Much controversy exists as to the precise privilege extended to members of Parliament at common law, and it seems difficult, if not impossible, to harmonize the available expressions of the English courts on the subject.

In 1841, however, the entire subject was reviewed in the case of *Cassidy* v. *Stewart,* 2 Manning and Granger 437. The decision in this case, in which the full bench participated, points out in detail, that, originally, at common law, no process of any kind could issue against a member of Parliament, but that the rule had been changed by statute through the enactment of 12 and 13 W 3, c. 3 and 10 G 3, c. 50, which statutes permitted certain service of process on members of Parliament.

The reason why these statutes were passed is apparent, as the English courts, differing from American courts, possess jurisdiction throughout England, and any suit thus brought against a member of Parliament might, by the court, be assigned for trial and disposition properly in the county of residence of the particular defendant. Consequently, the fact that the defendant might be in attendance upon Parliament became much less important.

State v. *District Court,* 243 Pac. 123 (Wyo.).

Argument—*Bolton* v. *Martin* (*infra*).

It seems clear, however, that, prior to these statutes, privilege from arrest, in England, embraced privilege from service of civil process.

In view of the statutory enactments, therefore, and the inherent difference in jurisdictional conditions, the former

and present status of the claimed privilege in England affords little aid in the determination of the question here submitted.

It would seem, however, that, in framing the constitutional provision, the framers must have had in mind the broad meaning of the word "arrest," which, exclusive of statute, had previously prevailed in England, because, as we shall see, the early cases in the United States all followed this broad interpretation of the word "arrest."

III.

Constitutional Provisions.

Clause 1 of Article 1, Section 6 of the Constitution provides:

> "* * * they (members of Congress) shall in all cases, except treason, felony and breach of peace, be privileged from arrest during their attendance at the sessions of their respective Houses, and in going to and returning from the same."

Similar language is found in practically each of the Constitutions of the several states, and has been the subject of a diversity of interpretations.

Cases may be found holding that the word "arrest" refers to the well-known arrest in criminal cases. Other cases hold that the word "arrest" should be confined to those instances of physical arrest in civil cases. It has further been held, as above stated, and as we contend here, that the word "arrest" is one of general significance which must be given a general meaning.

So far as the Federal courts are concerned, it has been settled by this Court that the privilege referred to in the constitutional provisions applies only to civil cases, and does not apply in any criminal proceeding. *Williamson* v. *United States*, 207 U. S. 425.

Consequently, the only question remaining is whether the word "arrest" refers only to those few remaining instances of civil arrest where actual detention of the person exists, or, more broadly contrued, applies to the service of civil process upon the member of Congress, as originally existed in England, and as held in the early cases on the point, immediately following the adoption of the Constitution.

It is, of course, freely conceded that the authorities are not now in accord upon this question. The decisions opposed are collected in the opinion below.

IV.

Applicable Decisions.

In the case of *Miner* v. *Markham*, 28 Fed. 387, the precise point here involved was presented with respect to service of process on a member of Congress, en route to the District of Columbia. The court held the constitutional provision exempted a member of Congress from service of process while going to the seat of government at Washington. A *fortiori*, we suggest, the same rule would apply if the member had actually reached Washington, and was engaged in his official duties, as was the defendant, here.

In *Bolton* v. *Martin*, 1 Dall. 296 (Pa.), it was held that a member of the State convention called to consider the ratification of the Constitution of the United States, was privileged from the service of summons or arrest during the session, and for a reasonable time before and after it.

Criticism is offered of this decision upon the allegation that the decision was based on an erroneous quotation from Blackstone. An examination of the well considered opinion plainly discloses that the court did not base its opinion upon the quotation from Blackstone, but merely referred to that quotation in general support of the con-

clusions reached. The decision is specifically in point and well reasoned.

In *Geyer's Lessee* v. *Irwin*, 4 Dall. 107, decided by Supreme Court of Pennsylvania in 1790, it was held that "a member of the general assembly is undoubtedly privileged from arrest, summons, citation, or other civil process during his attendance on the public business confided to him." Undoubtedly the decision was "dictum" but its reasoning is cogent.

Moreover, the rule announced, was approved and followed in *Gray* v. *Sill*, 13 W. N. C. 59, and *Ross* v. *Brown*, 7 Pa. Co. Ct. 142.

In *Nones* v. *Edsall*, 1 Wall. Jr. 189, Fed. Cas. 10,290, the court, while referring to the opinion in *Geyer's* case as dictum, states:

> "Members of Congress are privileged from arrest both on judicial and mesne process, and from the service of summons or other civil process while in attendance on their public duties."

The court, however, held that this privilege did not apply to a case already pending, which was not commenced by service on the member while in attendance on Congress.

The Supreme Court of the Territory of Wisconsin, in *Doty* v. *Strong*, 1 Pinney 84, likewise passed upon the precise question as affecting the territorial delegate in Congress. The court said:

> "In order to render this provision available to the extent of its necessity, it will not do to construe the words 'privilege from arrest' in a confined or literal sense. A liberal construction must be given to these words upon principle and reason. It is just as necessary for the protection of the rights of the people that their representative should be relieved from absenting himself from his public duties during the session

> of Congress, for the purpose of defending his private suits in court, as to be exempt from imprisonment on execution."

This opinion is criticized because the court cited only the *Geyer* case. The court's reasoning, however, remains entirely applicable.

Furthermore, the Wisconsin court in *Anderson* v. *Roundtree,* 1 Pinney 115, the following year, reaffirmed the conclusion reached in the *Doty* case.

See also:

> *Robbins* v. *Lincoln,* 27 Fed. 342;
> *Welsh* v. *Mooney,* 33 Ohio Cir. Ct. 214.

The same conclusion is reached in an extensive note found in 76 Am. St. Rep. 534.

It is submitted that the foregoing decisions clearly support the rule that freedom from arrest, includes freedom from service of civil process. It is not controverted that decisions may be cited opposing this contention. It is believed, however, that the status of most of the opposing decisions present various characteristic differences which should have careful consideration. Such cases involve either the privilege of suitors or witnesses and not those of public servants (*U. S.* v. *Cooper,* 4 Dall. 341). The privilege is demanded by residents of the jurisdiction and not by non-residents (*Case* v. *Rorabacker,* 15 Mich. 537). Frequently, the matter considered by the court involved a question of a waiver of the privilege instead of the existence or non-existence of the privilege, itself (*Peters* v. *League,* 13 Md. 58). Some of the cases involved the question of the service of a witness subpœna, and did not purport to involve the persons served in litigation (*Respublica* v. *Duane,* 4 Yeates 347). The case of *People* v. *Hofstadtor,* 258 N. Y. 425 (opinion by Cardozo, J.) had to do with a witness before a legislative committee, and did not

involve any suit, as the opinion points out. Still other cases dispose of the privilege as though it were to be considered only as a claim of personal benefit, wholly overlooking the public interest really at stake (*Phillips* v. *Browne,* 270 Ill. 450). The foregoing are some of the differences which we suggest will be found in most of the cases cited in opposition to the rule for which we here contend.

The Exemption from Service of Process Under General Law.

In considering the claimed right of a member of Congress to be privileged from the service of civil process while in attendance upon his duties at the seat of Government at Washington under the constitutional provision, it must be clearly appreciated that the existence of similar privileges, under general law and practices, with respect to the service of process, is not only not unusual, but is a frequent condition, viewed with favor, and always given a broad construction. Thus, the rule is practically universal that a non-resident of the jurisdiction, who is present in the jurisdiction either as a *suitor* or a *witness,* may not be lawfully served with process while thus present within the jurisdiction. This privilege is not dependent upon either constitutional or statutory enactment, but has grown up out of public policy, not as a favor to the privileged person, but as an inherent right on the part of the public interests.

> "Such privilege was not peculiar to the common law of England, nor did it exist only through constitutional or legislative enactments. It is inseparably connected with that fundamental maxim in free governments, that where exigency renders it necessary for the common preservation, the private right shall yield to public good."
>
> (Note: 16 Am. Dec. 782.)

Thus this Court in the case of *Stewart* v. *Ramsden*, 242 U. S. 128, establishes the universality of the rule, and points out that the privilege claimed is the privilege of the court "rather than of the defendant."

See also:

Wheeler v. *Flintoff*, 159 S. E. 112 (Va.).
Arnett v. *Smith*, 145 So. 638 (Miss.).
Zimmerman v. Buffington, 238 N. W. 115 (Neb.).
State v. *District Court*, 243 Pac. 123 (Wyo.).
Murrey v. *Murrey*, 16 Pac. (2nd) 741 (Calif.).
Higgins v. California Growers, 288 Fed. 550 (C. C. A. 2d).

Nor has this privilege, thus firmly established, been confined to suitors and witnesses. The rule is stated as follows:

> "In recent years, the privilege has, in some instances, as a matter of public policy, been extended to all non-residents within a jurisdiction, engaged in the performance of a public duty at least during the time of the emergency." (50 C. J. 246.)

Thus the privilege has been extended to national bank officials while attending conferences in other States upon the request of the Governor of a Federal Reserve Bank.

Filer v. *McCormick*, 260 Fed. 309 (Cal.).

We invite the attention of the Court to the decision in the *Filer* case which states:

> "It would be a singularly inconsistent public policy that dictated the protection of such a class (non-Resident Witnesses) and denied it to those engaged in serving solely the public good. * * * It is at least doubtful if those citizens would have given the same ready response to the dictates of their patriotic sense

> of duty had they been advised that the law was powerless to afford them protection against liability to harassing litigation to which they might be subjected by private suitors in strange and remote jurisdictions." (Cited with approval in *Murrey* v. *Murrey,* 16 Pac. (2nd) 741 (Cal.).

In the light, therefore, of such extension of privilege from service of process to suitors, witnesses and public servants, it is not surprising to find that some of the States have extended like privileges to members of the State Legislatures while such Legislatures are in session. (59 *Corpus Juris* 87 (54), and cases.)

We, therefore, find from the foregoing authorities, that the fullest privilege from service of process is extended to the various classes of persons heretofore detailed. These privileges are said to be the result of a controlling public policy, and are not based upon statutes and constitutional provisions. Such privilege is not viewed as belonging to the individual, but is looked upon as the exercise of a public right, governmental and judicial in its nature. The allowance of such privileges, these authorities state, has been more and more freely extended during recent years, until today it may be fairly stated that any person who comes, or is brought, into a foreign jurisdiction of which he is not a resident, on a judicial or public errand, is privileged from the service of civil process while within such foreign jurisdiction.

It seems perfectly apparent that every reason adduced for the establishment of these privileges just discussed, applies to a member of Congress, with peculiar force and pertinency. The public nature of the service, its importance to the individual State, and its presumed supreme necessity to the Government, all create a condition of national importance which much surpasses the needs upon

which privileges have been extended to other classes of persons. It is the height of absurdity to establish that a banker who enters a foreign State upon the request of Federal banking officials is immune from service of process while in that State, and a United States Senator, in such times as these, proceeding from the State of his domicile to attend an extraordinary session of Congress at the Capitol in the District of Columbia, might do so only subject to the menace of being harassed by private litigation in the District of Columbia.

The cases which we have cited above by analogy require the granting of such privilege to a member of Congress.

The establishment of such a rule creates no injustice. Even if it did, it would be subject to the rule that private interests must yield to the protection of the public interests. But no injustice exists. As the Federal court said in the *Filer* case (*supra*):

> "This conclusion is reached with less reluctance in that, while avoiding great inconvenience and harassment to the defendant, it works no great hardship on the plaintiff, no essential right being lost to him. The cause of action may readily be reasserted in the jurisdiction originally resorted to, as to which no such question can arise, and where his rights may be as fully and completely adjudicated and protected as in this."

The defendant is only present in the District of Columbia as a member of Congress in attendance upon his official duties. His home, domicile and residence is in the State of Louisiana, where he abides. Courts of Louisiana stand open to the plaintiff to litigate any cause of action which he may have, and the courts ought not to deny to the defendant, as a member of Congress, either under the constitutional provision, or under the principles of general law, the privilege which it so freely extends to litigants,

witnesses, and even to individuals, on errands connected with the public interest.

VI.

Modification of Opinion Below.

Our third reason for praying the issuance of a writ, is due to the error committed by the court below, in departing from the accepted and usual course of judicial proceedings, to defendant's prejudice.

The petitioner, appearing specially, submitted a motion to quash the service of summons, because of his claimed exemption (R. 19).

The court denied the motion. An appeal followed, solely involving the soundness of the motion to quash. No other point was involved, presented, or argued.

On deciding the issue, however, the court below said (R. 25):

> "It is sufficient to say that if the allegations of the petition are supported by sufficient evidence, the matter charged constitutes libel *per se*."

Whether the matter charged constituted libel *per se*, was not before the court. The time to so decide would be when, as, and if, the case should be thereafter tried on the merits.

Then the court continued (R. 30):

> "Defendant pitches his defense upon the exemption from arrest, and not upon his exemption from responsibility for statements made in his speech on the floor of the Senate, but were that claim advanced it would be without force since the acts charged have only remote connection with the speech. While the published articles were in part reproductions of the speech, the offense consists not in what was said in the Senate, but in the publication and circularizing of the libelous documents."

In this language the court decides at least two vital issues, certain to arise upon a trial, to wit:

(1) That the acts charged, that is, the dissemination of the speech, by Congressional frank, were not within the constitutional immunity protecting the speech.

(2) That the publication and circularization of the reports of the speech, is, first, an offense, and second, a different offense than the uttering of the speech on the floor of the Senate. Such questions are vital to the future presentation of petitioner's defense, if a trial shall be had. No court has ever decided these questions. They are new, and exceedingly important in these days of the extension of the Congressional franking privilege.

Yet, if the opinion below stands, petitioner must, if he shall fail in his claim of exemption from service of process, herein submitted, proceed to trial before judges who will be fairly bound to follow what the Court of Appeals has improperly announced as the law, and the Court of Appeals itself, in the event of a future appeal, will be embarrassed by this premature statement of what its own final opinion should be.

We asked the court below to strike out the objectionable matter (R. 31). The court refused, thus intensifying the injury to petitioner. We submit, therefore, that our petition to the Court for a writ of certiorari, under our third reason for granting the writ, is the only way in which the lawful rights of petitioner may be properly protected.

JOSEPH E. DAVIES,
RAYMOND N. BEEBE,
ADRIEN F. BUSICK,
SETH W. RICHARDSON,
Attys. for Petitioner,
Washington, D. C.

FILE COPY

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CHARLES ELMORE

Supreme Court of the United States

OCTOBER TERM, 1934.

No. 18.

HUEY P. LONG, *Petitioner,*

v.

SAMUEL T. ANSELL.

BRIEF ON BEHALF OF RESPONDENT.

SAMUEL T. ANSELL.

BURR TRACY ANSELL,
Of Counsel.
835 Transportation Building,
Washington, D. C.

PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

Supreme Court of the United States

OCTOBER TERM, 1934.

No. 18.

HUEY P. LONG, *Petitioner,*

v.

SAMUEL T. ANSELL.

BRIEF ON BEHALF OF RESPONDENT.

1.

There is but one question before this honorable Court: *Is a Senator of the United States, while serving in his official capacity, exempt from service of civil process in the District of Columbia?* The Supreme Court of the District, upon motion to quash, ruled No; and upon special appeal, the Court of Appeals also ruled No, affirmed the order denying the motion, and wrote a cogently-reasoned opinion (69 F. (2d), 386). Petitioner's fault-finding with the opinion of the Court of Appeals, claiming it passed beyond the question before it and to the merits of the litigation, presents no question here. The expressions complained of, patently true as shown by the record, were statements of reasoning and elucidation and not of decision. Judicial

opinions are neither imperial rescripts nor mere ritualism. The Court of Appeals decided the one question before it; and that question is the only question before this Court.

2.

We rest our case upon the strength of the opinion of the Court of Appeals (R. 23), adding here only a few brief comments:

(1) Petitioner professes to see the question in three aspects: (a) the Common Law; (b) the "modern extension" of the judicial privilege of exempting from service of process "suitors, witnesses, and public servants" from a foreign jurisdiction; (c) the Constitution.

We see it in but one—the Constitution. Article I, Section 6, provides—

> "* * * They [Senators and Representatives] shall in all cases, except treason, felony and breach of the peace, be privileged from *arrest* during their attendance at the session of their respective Houses, and in going to and returning from the same * * *"—

in which "arrest" means actual detention of the person.

(2) An examination of the cases cited by petitioner requires us to say that they are not of a character to merit serious consideration or extended discussion.

(3) The law, as we think it has ever been applied in this jurisdiction from the earliest times, was long ago authoritatively declared in Merrick & Durant v. Giddings, 1 McArthur and Mackey's Reports, 55 (1879) and Howard v. Trust Company, 12 App. D. C. 222 (1898), in able and exhaustive opinions; and now again by the Court of Appeals in the instant case. These decisions are in entire accord with Williamson v. The United States, 207 U. S. 425, in which this Court manifestly saw no "supreme necessity to the Government" for liberalizing the immunity beyond strict constitutional requirement.

3.

Petitioner's plea made to the courts below and now to the highest of American tribunals seems, to us at least, strikingly, almost disturbingly, strange and foreign; a plea for senatorial prerogative that places the personal wrongs done by a Senator to a private citizen beyond the effective reach of the law. He contends for a judicial enunciation of a public policy rule under which the District of Columbia would become a retreat in which Senators, Representatives, and everybody else engaged here in public service, would be free from answering for their breaches of contract obligations and their tortious acts done to the person or property of a citizen. He urges that this Court should require the courts here to adopt what he regards as more modern public policy, and, without constitutional or statutory provision, extend the fullest immunity from civil suit not only to suitors and witnesses but to "any person who comes, or is brought, into a foreign jurisdiction of which he is not a resident, on a judicial or public errand" and, *a fortiori*, to a Senator of the United States. The "supreme necessity to the Government", it is said, to which private rights must yield, requires that a Senator must not be "subject to the menace of being harassed by private litigation in the District of Columbia". If a Senator, or any of the thousands engaged here in the service of the public, injure or destroy the person, property, or reputation of a citizen, or flout his obligations to merchant, tailor, butcher, baker, this honorable Court is asked to say that the injured citizen shall have no redress in the courts here where the wrong is done, and must be content to follow the wrongdoing Senator into his own bailiwick—poor right indeed.

4.

Experience, we think, would suggest no judicial extension beyond the privileges and immunities fairly established by the specific provision of the Constitution. We

are insensible to the argument that this Court should deduce out of the Constitution or its concept of public policy the remarkable immunity contended for.

Respectfully submitted,

SAMUEL T. ANSELL.

BURR TRACY ANSELL,
Of Counsel.
835 Transportation Building,
Washington, D. C.

OPINION

SUPREME COURT OF THE UNITED STATES.

No. 18.—October Term, 1934.

Huey P. Long, Petitioner,
vs.
Samuel T. Ansell.

On Certiorari to the Court of Appeals of the District of Columbia.

[November 5, 1934.]

Mr. Justice Brandeis delivered the opinion of the Court.

On March 27, 1933, Samuel T. Ansell, a resident of the District of Columbia, brought, in the Supreme Court of the District, an action for libel against Huey P. Long of Louisiana. The summons was served on the defendant within the District. It directed him to answer and show cause why the plaintiff should not have judgment for the cause of action stated in his declaration. The defendant, appearing specially, and solely for the purpose, filed on April 25, 1933, a motion to quash the summons and the service thereof on the following ground:

"The summons was issued on Monday, March 27, 1933 and served on the defendant on Monday, April 3, 1933, whereas the first session of the Seventy-third Congress was convened on the ninth day of March, 1933 and has remained continuously in session since that date, and was in session on the dates of the issuance and service of said summons (of which fact defendant prays the court to take judicial notice) and the defendant as alleged is a United States Senator who was in attendance upon the meetings of the first session of the Seventy-third Congress of the United States and the summons and service thereof is invalid and of no legal effect whatever because in violation of Article I, Section 6, Clause 1, of the Constitution of the United States, which provides that Senators and Representatives of the United States 'shall in all cases except, treason, felony and breach of the peace be privileged from arrest during their attendance at the session of their respective houses, and in going to and returning from the same.'"

On May 9, 1933, the Supreme Court of the District denied the motion, but stayed further proceedings for twenty days pending application to the Court of Appeals of the District for a special

appeal. That court allowed the appeal. On February 5, 1934, it affirmed the order denying the motion to quash. 69 F. (2d) 386. This Court granted certiorari. 292 U. S. 619.

Senator Long contends that Article I, Section 6, Clause 1 of the Constitution, confers upon every member of Congress, while in attendance within the District, immunity in civil cases not only from arrest, but also from service of process. Neither the Senate, nor the House of Representatives, has ever asserted such a claim in behalf of its members. Clause 1 defines the extent of the immunity. Its language is exact and leaves no room for a construction which would extend the privilege beyond the terms of the grant. In *Kimberly* v. *Butler,* Fed. Cases No. 7, 777, Mr. Chief Justice Chase, sitting in the Circuit Court for the District of Maryland, held that the privilege was limited to exemption from arrest. Compare Mr. Justice Grier, sitting in the Circuit Court of the District of New Jersey in *Nones* v. *Edsall,* 1 Wall. Jr. 189, Fed. Cases No. 10, 290. The courts of the District of Columbia, where the question has been raised from time to time since 1868, have consistently denied the immunity asserted. *Merrick* v. *Giddings,* McArthur & Mackey 55, 67; *Howard* v. *Citizens' Bank & Trust Co.,* 12 App. D. C. 222.[1] State cases passing on similar provisions so hold.[2]

History confirms the conclusion that the immunity is limited to arrest. See opinion of Mr. Justice Wylie in *Merrick* v. *Giddings.* The cases cited in support of the contrary view rest largely upon doubtful notions as to the historic privileges of members of Parliament before the enactment in 1770 of the statute of 10 George III, c. 50.[3] That act declared that members of Parliament should

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[1]See also Worth *v.* Norton, 56 S. C. 56; Bartlett *v.* Blair, 68 N. H. 232.

[2]Phillips *v.* Browne, 270 Ill. 450; Berlet *v.* Weary, 67 Neb. 75; Rhodes *v.* Walsh, 55 Minn. 542; Gentry *v.* Griffith, Hyatt & Co., 27 Tex. 461; Catlett *v.* Morton, 4 Litt. (Ky.) 122; compare Doyle-Kidd Dry Goods Co. *v.* Munn, 151 Ark. 629; Huntington *v.* Shultz and M'Kenna, 1 Harp. L. Rep. (S. C.) 452; Hart and Foster *v.* Flynn's Executor, 8 Dana (Ky.) 190.

[3]See Bolton *v.* Martin, 1 Dall. 317; Gyer's Lesse *v.* Irwin, 4 Dall. 96; Doty *v.* Strong, 1 Pinney (Wis.) 84; Anderson *v.* Rountree, 1 Pinney 115; Miner *v.* Markham, 28 Fed. 387. The first of these cases relied upon a passage in Blackstone in which it is stated that no member of either house may be "served with any process of the courts of law . . . without a breach of the privilege of parliament". The passage appears as quoted in the fourth edition of Blackstone (1771), v. 1, p. 165. In the fifth edition (1773), however,

be subject to civil process, provided that they were not "arrested or imprisoned". When the Constitution was adopted, arrests in civil suits were still common in America.[4] It is only to such arrests that the provision applies. *Williamson* v. *United States,* 207 U. S. 425.

The constitutional privilege here asserted must not be confused with the common law rule that witnesses, suitors and their attorneys, while in attendance in connection with the conduct of one suit, are immune from service in another. That rule of practice is founded upon the needs of the court, not upon the convenience or preference of the individuals concerned. And the immunity conferred by the court is extended or withheld as judicial necessities require. See *Lamb* v. *Schmitt,* 285 U. S. 222, 225, 226.

Affirmed.

A true copy.

Test:

Clerk, Supreme Court, U. S.

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the phrase "served with any process of the courts of law" is deleted and other changes made in the same paragraph, so as to correspond with the statute of 10 George III, c. 50. In Miner *v.* Markham, the passage is quoted in its original form.

[4]Wyche, Practice of the Supreme Court of the State of New York (2d. ed., 1794), p. 50, *et seq.;* Robinson, Practice in Courts of Law and Equity in Virginia (1832), pp. 126-130; Howe, Practice in Civil Actions and Proceedings at Law in Massachusetts (1834), pp. 55-56, 141-148, 181-187; Troubat & Haly, Practice in Civil Actions and Proceedings in Supreme Court of Pennsylvania (1837), pp. 170-189. An early Virginia statute provided that in actions against the Governor and certain other officers of the Commonwealth, a summons should issue "instead of the ordinary process", the capias ad respondendum. Collection of the Acts of the General Assembly of Virginia, Published Pursuant to the Act of 1792 (1794), c. 66, § 23, p. 83; Rev. Code (1819), c. 128, § 68, p. 506.